

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAN SICKMAN, et al.	:	CIVIL ACTION
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	:	
v.	:	
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	:	
COMMUNICATIONS WORKERS OF	:	
AMERICA, LOCAL 13000, et al.	:	NO. 99-5582

M E M O R A N D U M

Padova, J.

November 16, 1999

Plaintiff Dan Sickman ("Sickman"), along with class representatives Steve P. Gramiak, Jr. and Edward P. Murray, has filed a Motion for a Preliminary Injunction against Defendants Communications Workers of America, Local 13000 ("Local 13000") and the individual members of the union's election committee on behalf of himself and the class of union members who signed petitions nominating Sickman as a candidate for Local secretary-treasurer in the union's 1999 general officer election pursuant to Title I of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411, and section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185. Plaintiffs claim that the Defendants have violated their rights under Title I to vote and nominate candidates and request this Court order Defendants to list Sickman as a candidate for the office of Local secretary-treasurer on the ballot and enjoin them from taking any action to

remove him from the ballot. Plaintiffs also request that the Court order Defendants to distribute among the union membership written notification that the election of Local Secretary-Treasurer is contested and that Sickman is a candidate for that office. Plaintiffs also request that the Court order Defendants to distribute among the union membership written notification that the election of Local Secretary-Treasurer is contested and that Sickman is a candidate for that office.¹

I. Background

Local 13000 is on the brink of conducting elections to fill various statewide and regional offices, including that of Local secretary-treasurer. Ballots will be mailed on November 16, 1999, and counted on December 1 and 2, 1999. The union constitution requires local units adopt bylaws and rules governing elections and select an election committee to conduct the election.

Under the bylaws adopted by Local 13000, the election committee is responsible for distributing nominating petitions for these statewide and regional offices, as well as receiving and certifying aspirant's nominating petitions. Candidates for statewide positions, including that of Local secretary-treasurer, are elected by the entire union membership. To be nominated for those offices, an aspirant must obtain the signatures of at least 5 percent of the membership, which in this case amounts to 463

¹Plaintiffs have withdrawn this portion of their request.

signatures, on petitions issued by the election committee. The committee then prints the ballots and supervises the entire ballot distribution and collection process, and is ultimately responsible for certifying the elected candidates.

This year, the Local 13000 Election Committee promulgated a Notice of Union Elections to its members detailing the timeline and procedures for conduct of the election. In particular, the Notice mandated that nominating petitions be returned to the committee by October 28, 1999. The committee stated that petitions must be returned by either mail or fax. If an aspirant faxed his petitions to the committee, then the committee would consider the original petitions to be the aspirant's receipt. The committee reserved the right to require production of the original petitions as proof.

Dan Sickman, through circulators and others acting on his behalf, attempted to gather the requisite number of signatures on his petitions nominating him for the office of Local secretary-treasurer. Sickman contends that he and his circulators faxed to the election committee nominating petitions containing at least 497 valid signatures on the morning of October 28, 1999. Of those 497 valid signatures to which Sickman points, the election committee admits receiving only 395 signatures but denies receiving 102 of those signatures. Furthermore, the election committee contends that it received petitions nominating Sickman that contained 549 signatures of which 95 were questioned as fraudulent because they were identical to petitions submitted in

support of candidate Elizabeth Denn.

A brief investigation ensued, during which the election committee requested that both Denn and Sickman produce their original petitions for inspection on Tuesday, November 2, 1999 by 3:00 p.m.. However, on Monday, November 1, 1999, the election committee determined that even without counting those 95 questionable signatures Denn had submitted over the requisite number of signatures (463 signatures). Therefore, the committee certified her candidacy without inspecting her original petitions.

In contrast, the election committee asserted that the petitions nominating Sickman that they had received contained only 454 valid signatures, not counting the 95 questionables. Therefore, he fell short of the 463 signatures required to qualify him as a candidate. Unlike its action with Denn, the committee persisted with its request to review Sickman's original petitions.

Following a flurry of letters and one telephone conversation of disputed content, Sickman appeared at the union hall with his original petitions accompanied by an observer on Wednesday, November 3, 1999, one day after the date the committee originally specified in writing. Sickman contends that Carl Schwab, co-chair of the election committee, had agreed to meet him on Wednesday, November 3, rather than on Tuesday, November 2. Schwab denies making any such statement. In any event, no member of the election committee was present at the hall on Wednesday,

November 3, to admit Sickman or inspect the petitions. Since Sickman had not appeared on Tuesday, November 2, with his petitions, the committee sent him a letter notifying him that he was not a candidate for office.

On November 10, 1999, Plaintiffs filed a motion for a temporary restraining order to force the election committee to print ballots with Sickman's name listed as a candidate for Local secretary-treasurer. On November 12, 1999, the parties entered into a consent decree approved by the Court ordering that the election committee print ballots listing Sickman's name and meet with Sickman and inspect his original petitions on November 13, 1999.

It was at this meeting, Sickman asserts, that he saw for the first time the contested petitions containing the 95 signatures. Sickman claims that neither he nor anyone acting on his behalf submitted those petitions. The election committee asserts that this meeting was the first time it saw that subset of Sickman's petitions containing the 102 signatures.

This brings us to the hearings on Plaintiffs' Motion for Preliminary Injunction on November 15, 1999.

II. Subject Matter Jurisdiction

Before deciding any issue regarding the merits of Plaintiff's Motion, this Court must determine whether it has jurisdiction over the subject matter of this case. Defendants argue that the Court is being asked to decide Sickman's eligibility as a candidate in the upcoming election and that such

an issue is solely within the province of the Title IV post-election remedial structure. Therefore, according to Defendants, this Court lacks subject matter jurisdiction over the instant petition.

Title I of the LMRDA, codified at 29 U.S.C. § 411, provides union members with a Bill of Rights that are enforceable in federal court. See 29 U.S.C. §§ 411-415 (1994); Local No. 82 Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen and Packers v. Crowley, 467 U.S. 526, 536, 104 S. Ct. 2557, 2563, 81 L.Ed.2d 457 (1984). In particular, Title I guarantees every union member equal rights to vote and nominate candidates:

Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

29 U.S.C. § 411(a)(1) (1994). Federal courts have consistently interpreted this protection to extend to union members while they are participating in union elections. Crowley, 467 U.S. at 537. Title I allows individual union members to maintain a suit in federal court to enforce that title's protections:

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate.

29 U.S.C. § 412 (1994); Crowley, 467 U.S. at 538.

The LMRDA also contains Title IV which regulates the conduct of elections for union officers with the similar goal of ensuring free and democratic elections. Crowley, 467 U.S. at 539. See also 29 U.S.C. §§ 481-483 (1994). Title IV "sets up a statutory scheme governing the election of union officers, fixing the terms during which they hold office, requiring that elections be by secret ballot, regulating the handling of campaign literature, requiring a reasonable opportunity for the nomination of candidates, authorizing unions to fix 'reasonable qualifications uniformly imposed' for candidates, and attempting to guarantee fair union elections in which all the members are allowed to participate." Crowley, 467 U.S. at 539 (citing Calhoon v. Harvey, 379 U.S. 134, 140, 85 S. Ct. 292, 296, 13 L.Ed.2d 190 (1964)). Thus, often Title I and Title IV provide overlapping protections for the same rights. Crowley, 467 U.S. at 539. However, courts interpret Title IV to primarily regulate eligibility and other procedural questions of the conduct of elections, see Crowley, 467 U.S. at 539, and Title I to govern issues of discrimination, Kraska v. United Mine Workers of America, 686 F.2d 202, 207 (3rd Cir. 1982).

Title IV contains its own set of comprehensive administrative procedures to enforce its standards that first requires grievants to exhaust internal union remedies before filing a complaint with the Secretary of Labor. 29 U.S.C. § 482(a) (1994). The Secretary of Labor must investigate the complaint and retains sole power to bring a civil action against

the union to set aside the election and direct and supervise a new election. 29 U.S.C. § 482(b) (1994); Trbovich v. Mine Workers, 404 U.S. 528, 531, 92 S. Ct. 630, 632, 30 L.Ed.2d 686 (1972).

Title IV also contains an exclusivity provision that provides:

Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive.

29 U.S.C. § 483 (1994). Federal courts interpret this exclusivity provision to bar Title I relief when an election that has already been completed is challenged. Crowley, 467 U.S. at 541. That is not the issue in a case such as this where the claim is brought during the course of an election. Rather, the full panoply of Title I rights are available to union members since it is prior to the conduct of the election. Id. Thus for subject matter jurisdiction purposes, the issue is whether this case implicates Title I or Title IV rights.

Determining which section applies rests on the analysis of several factors: (1) the timing of the suit (before or after a union election); (2) the nature of the underlying complaint; and (3) the type of relief sought. Crowley, 467 U.S. at 546; Kraska, 686 F.2d at 205. Generally, complaints allege Title IV grievances where they involve challenges to eligibility standards that are applied evenhandedly, but are unreasonable, Kraska, 686

F.2d at 205, or where they are filed after an election has been conducted, Crowley, 467 U.S. at 541. In contrast, Title I primarily protects union members against the discriminatory application of union rules and complaints raised under it must be brought prior to the conclusion of the election. Crowley, 467 U.S. at 546-8; Kraska, 686 F.2d 206-207.

Defendants characterize this case as centering around the issue of Sickman's eligibility. The Court disagrees and believes that this case raises issues properly characterized as falling under Title I. The facts of this case clearly implicate the right of union members to nominate candidates, vote for such candidates, and be free from discriminatory disqualification.

If Sickman's name is left off the ballot and he did in fact submit over 463 valid signatures to the election committee, then these union members who nominated Sickman would be deprived of their equal right to nominate and vote, rights guaranteed by Title I. Furthermore, Plaintiffs would be the victims of discriminatory treatment since the election committee excused Denn's failure to comply with the committee's request to produce her original petitions. Such discriminatory disqualification is the 'classic' case of infringement of Title I rights. See Kraska, 686 F.2d at 207. For these reasons, the Court finds that Plaintiffs have alleged claims arising under Title I of the LMRDA over which this Court may properly assert subject matter jurisdiction.

III. Motion for Preliminary Injunction

A. Legal Standard

Courts must consider four factors when assessing a motion for a preliminary injunction: (1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest. Council of Alternative Political Parties v. Hooks, 121 F.3d 876, 879 (3rd Cir. 1997).

B. Likelihood of Success on the Merits

The Court concludes that Plaintiffs have demonstrated a reasonable likelihood of success on the merits. The central disputed fact issue is whether Sickman, through those acting on his behalf, faxed and the election committee received nominating petitions containing sufficient signatures to constitute five percent of the statewide union membership.

Plaintiffs offered the testimony of Elizabeth Denn that she faxed four of the five petition pages that contained 93 of the 102 signatures that the election committee denies having received. Joe Gallagher testified that he faxed the remaining page containing 9 signatures and received oral confirmation of receipt from Jean Pennie, an assistant at the union office.

Denn and Gallagher were credible witnesses. There is no objective basis that would impeach their testimony. The pages

were faxed but because of the loose procedures for handling faxed nominating petitions employed by the election committee office, the committee may never have received the petitions containing the 102 signatures.²

Jean Pennie was in charge of receiving nomination petitions sent to the main fax equipment on the third floor of the union hall. She was also responsible for handling personally the petitions regarding the Executive Board offices, including the Local secretary-treasurer. The practice called for her to sign and date each fax as it was received.³ The union hall also contained another fax machine on the second floor which was staffed by an individual other than Pennie. Pennie testified that it was possible that she would not have seen nominating petitions that came into the second floor fax machine.

Denn's and Gallagher's testimony established that the bulk of Sickman's petitions were faxed prior to 9:00 a.m. on October 28, 1999. However, on that morning, Jean Pennie did not arrive at the union office until nearly 9:20 a.m.. In addition, some of Sickman's petitions may have been received by fax equipment located on the second floor and may very well have not been transmitted to Pennie for her signature, nor been given to the

²Carl Schwab testified for Defendants that the election committee never saw those petitions containing the 102 signatures. While there is no reason to disbelieve his testimony, these facts do not require the inference that the petitions were not received by the union's fax machine.

³The union's fax machine itself does not imprint the date or time on which incoming faxes are received.

election committee. Under such circumstances, the Court cannot conclude that the petitions were not received at the Local's office.

Based on this record, the Court finds that it is reasonably likely that Plaintiffs will prove that 497 union members signed petitions nominating Sickman to the office of Local Secretary-Treasurer and that those petitions were faxed to the union headquarters in a timely fashion in conformity with the rules set out by the election committee.

The fact of Sickman's failure to follow the Election Committee's directive to produce his original petitions by 3:00 p.m. on Tuesday, November 2, 1999, would ordinarily weigh in the Defendant's favor. However, here the record contains evidence that the requirement was ignored for candidate Denn because her petitions contained enough signatures under the rules even without counting the disputed 95 signatures. Sickman, assuming he succeeded in proving that the Election Committee received the additional 102 signatures in a timely fashion, would have been in the exact same position as Denn and, as Committee Co-Chair Schwab admits, would have been treated the same way and certified as an eligible candidate. Therefore, given the Court's conclusion that Sickman is reasonably likely to prove that 497 members signed his nominating petitions and such petitions were timely submitted to the Election Committee, his failure to comply with the Election Committee's request does not defeat his likelihood of success on the merits.

C. Irreparable Harm

To show irreparable harm, a plaintiff must demonstrate the existence of a potential harm that cannot be redressed by a legal or an equitable remedy following a trial or other remedial procedure. Acierno v. New Castle County, 40 F.3d 645, 653 (3rd Cir. 1994)(citation omitted). The injury created by a failure to issue the requested injunction must be peculiar enough in nature that later compensation cannot atone for it. Id. Parties seeking a mandatory preliminary injunction that will alter the status quo bears a particularly heavy burden in demonstrating its necessity. Id. In a case like Sickman's, however, maintenance of the status quo - omitting his name from the ballot - is what creates the harm.

The Court concludes that irreparable harm would result to the class Plaintiffs should Sickman's name be omitted from the ballot. Title I guarantees the equal rights of union members to vote in elections and nominate candidates, subject to reasonable rules. These rights are meaningless and Title I's enforcement provision is rendered superfluous if courts are powerless to enforce these rights prior to their deprivation. To say that Plaintiffs' rights may be vindicated in a post-election administrative procedure does not cure the initial injury occurring during the election in which they could not vote for their duly nominated candidate.

D. Greater Harm to Defendants and the Public Interest

The Court concludes that granting preliminary injunctive

relief would not cause greater harm to Defendants. The administrative burden of restuffing the ballots is an inconvenience but is not so insurmountable as to override the harm to Plaintiffs' from depriving them of preliminary relief.

The Court further concludes that the public interest clearly favors the protection of union members' voting and associational rights. See Hooks, 121 F.3d at 884 (speaking generally about favoring protection of voting and associational rights); Crowley, 467 U.S. at 536-38 (discussing Congress' concern for abuses of power by union leadership and protection of members' speech, assembly, and voting rights in enacting the LMRDA).

IV. Appropriate Remedy

Having concluded that Plaintiffs are entitled to preliminary injunctive relief, the Court must determine if an appropriate remedy can be fashioned. The United States Supreme Court has stated that a district court may award appropriate relief under Title I while an election is being conducted where the violation is easily remedied without substantially delaying or invalidating an ongoing election. Crowley, 467 U.S. at 546. The Court understands that under Crowley and other relevant precedent, 'appropriate relief' under Title I cannot include supervising elections or enjoining the holding of elections. Crowley, 467 U.S. at 545-548. The Court also acknowledges that it may not have the power to determine Sickman's eligibility for office and thus override the decision of the Election Committee since it operated under a valid union constitution and bylaws. See Filson

v. Pennsylvania Joint Board, No. Civ. A. 95-1396, 1995 WL 113043 at *8 (E.D.Pa. March 15, 1995). The remedy that this Court will provide to protect Plaintiffs' Title I rights does not interfere with, invade, or impair the post-election remedial structure established by Title IV, such as conduct or supervise elections, certify election results or determine eligibility.

The only remedy available to protect Plaintiffs Title I rights is the placement of Sickman's name on the ballot. However, this Court by ordering such relief does not find that Sickman is an eligible candidate. Nor does the Court's order require the election committee, should Sickman prevail in the election, to validate his election returns. The ultimate determination of the validity of the election and Sickman's eligibility is for the Title IV post-election process.

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O R D E R

AND NOW, this day of November, 1999, upon consideration of Plaintiffs' Motion for Injunctive Relief (Doc. No. 2) and Defendants' Response thereto, **IT IS HEREBY ORDERED** that Plaintiffs' Motion is **GRANTED**. Upon payment by Plaintiffs of security in the amount of \$ 10,000 (ten thousand dollars), Defendants are **ORDERED** to take any and all administrative and/or clerical actions as necessary to ensure that the name of Dan Sickman is listed for the office of Local Secretary-Treasurer of the Communications Workers of America, Local 13000, on the ballots that are to be distributed on or about November 16, 1999.

BY THE COURT:

John R. Padova, J.